

Docket No. 91-30

SECTION 122(h)(1) COST RECOVERY AGREEMENT

This Agreement is made and entered into by the United States Environmental Protection Agency ("EPA") and the City of Phoenix, Arizona (the "City"). The purpose of this Agreement is for EPA to recover response costs incurred by the United States at or in connection with the 19th Avenue Landfill site (the "Site") located in Phoenix, Arizona, and to resolve the liability of the City for such response costs. EPA is authorized to enter into this Agreement pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA"), which authority has been delegated to the Regional Administrator of the EPA by EPA Delegation No. 14-14-D (Sept. 13, 1987).

WHEREAS, EPA has determined that hazardous substances, as defined by Section 101(14), 42 U.S.C. § 9601(14), are present at the Site and that such hazardous substances have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA has determined that the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

WHEREAS, EPA has determined that such releases or threatened releases required response action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will require further response action to be undertaken in the future;

WHEREAS, EPA alleges that in performing this response action, response costs have been incurred by EPA at or in connection with the Site, totaling \$514,096.31 as of February 28, 1990, and further that statutory interest on such costs totals \$38,082.04 as of May 31, 1991;

WHEREAS, EPA alleges that the City is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred by EPA at or in connection with the Site;

WHEREAS, EPA and the City desire to settle certain claims arising from the City's alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact or law;

NOW, THEREFORE, EPA and the City, in consideration of the promises herein, and intending to be legally bound hereby, agree as follows:

1. This Agreement shall be binding upon EPA and shall be binding upon the City, its directors, officers, employees, agents, successors and assigns. Each signatory to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her. The City agrees to undertake all actions required by this Agreement. The City will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

2. The City agrees to pay to the Hazardous Substance Superfund \$552,178.35, within 30 days of the effective date of this Agreement.

3. The City agrees to pay interest on any amounts not paid within 30 days of the effective date of this Agreement. Any interest paid pursuant to this Agreement shall be paid in the amount described in Section 107(a) of CERCLA.

4. The City's payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name and address of the Settling Party, the site name, and the EPA account number (9T05) for this site and shall be sent by the City to:

EPA - Region 9
Superfund Accounting
P.O. Box 360863M
Pittsburgh, Pennsylvania 15251

5. The City shall simultaneously send a copy of its check to:

Michael Wolfram
EPA Region 9, H-7-1
75 Hawthorne Street
San Francisco, California 94105

6. In addition to any other remedies or sanctions available to EPA, including but not limited to penalties under Section 109 of CERCLA, if the City fails or refuses to comply with any term or condition of this Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA.

7. Upon payment of the amount specified in Paragraph 2 of this Agreement, EPA agrees that the City shall have resolved all of its civil liability under Section 107(a) of CERCLA, 42

U.S.C. § 9607(a), for reimbursement of response costs incurred (and interest thereon) at or in connection with the Site as of February 28, 1990.

8. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against the City for

(a) any liability as a result of failure to make the payment required by Paragraph 2 of this Agreement; or

(b) for costs incurred by EPA subsequent to February 28, 1990; or

(c) any matters not expressly included in Paragraph 7, including, without limitation, any liability for (i) injunctive relief at the Site, (ii) damages for injury to or loss or destruction of natural resources, or (iii) criminal liability.

9. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise on any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

10. The City agrees not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at the Site, or to seek any other costs, damages, or attorney's fees from

the United States, its agencies, employees or contractors arising out of response activities undertaken at the Site.

11. With regard to claims for contribution against the City for matters addressed in this Agreement, the parties hereto agree that the City is entitled, as of the effective date of this Agreement, to such protection from contribution actions or claims as is provided in Sections 113(f)(2) and 122(h)(4) of CERCLA.

12. This Agreement shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

13. The effective date of this Agreement shall be the date upon which EPA issues written notice to the City that the public comment period pursuant to Paragraph 12 of this Agreement has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

The City of Phoenix

By: 

City Manager

9-12-91

[Date]

U.S. Environmental Protection Agency

By: 

Its: Director, Hazardous Waste Management
Division

9-23-91

[Date]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF:

THE CITY OF PHOENIX, ARIZONA

Respondent,

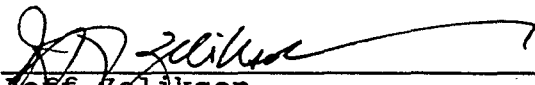
Proceeding Under Section 122(h) of
the Comprehensive Environmental
Response, Compensation, and
Act of 1980, as amended, (CERCLA),
42 U.S.C. § 9622(h)

Docket No. 91-30

NOTICE OF APPROVAL OF SETTLEMENT

The public comment period as to the proposed settlement in the above referenced matter has officially closed, as of December 2, 1991. After considering comments submitted by Allied-Signal Corporation with respect to said proposed settlement, EPA hereby determines that no basis exists to modify, withdraw or withhold consent to it pursuant to Section 122(i)(3) of CERCLA.

Therefore, the Consent Agreement between the City of Phoenix and EPA concerning payment of past costs incurred at the 19th Avenue Landfill Superfund site, Docket No. 91-30, is approved and effective as of 12/12/91, 1991.


Jeff Zelikson
Director, Hazardous Waste Management
Division